

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KENT D. HARRIS, State Bar No. 144804  
Deputy Attorney General  
4 California Department of Justice  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-7859  
Facsimile: (916) 327-8643  
7

8 Attorneys for Complainant

9 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-48

13 BRETT MILLER  
14 P.O. Box 134  
Brownsville, CA 95815

15 Certified Public Accountant License No. CPA  
71097

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 Respondent.  
17

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:  
20

21 PARTIES

22 1. Carol Sigmann (Complainant) is the Executive Officer of the California  
23 Board of Accountancy. She brought this action solely in her official capacity and is represented  
24 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Kent D.  
25 Harris, Deputy Attorney General.

26 2. Brett Miller (Respondent) is representing himself in this proceeding and  
27 has chosen not to exercise his right to be represented by counsel.  
28

3. On or about May 10, 1996, the California Board of Accountancy issued Certified Public Accountant License No. CPA 71097 to Brett Miller (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2007-48 and will expire on January 31, 2009, unless renewed.

## JURISDICTION

4. Accusation No. AC-2007-48 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on October 2, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. AC-2007-48 is attached as exhibit A and incorporated herein by reference as if fully set forth herein.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. AC-2007-48. Respondent has also carefully read, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2007-48.

9. Respondent agrees that his Certified Public Accountant License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

10. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

## OTHER MATTERS

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

## DISCIPLINARY ORDER

In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by respondent, issue and enter the following Disciplinary Order:

IT IS HEREBY ORDERED that Certified Public Accountant License No. CPA 71097 issued to Respondent Brett Miller is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

///

1                   1.       **Actual Suspension.** Certified Public Accountant License No. CPA  
2 71097 issued to Brett Miller is suspended for sixty (60) days. During the period of suspension  
3 the Respondent shall engage in no activities for which certification as a Certified Public  
4 Accountant or Public Accountant is required as described in Business and Professions Code,  
5 Division 3, Chapter 1, Section 5051.

6                   2.       **Obey All Laws.** Respondent shall obey all federal, California, other  
7 states' and local laws, including those rules relating to the practice of public accountancy in  
8 California.

9                   3.       **Submit Written Reports.** Respondent shall submit, within ten (10) days  
10 of completion of the quarter, written reports to the Board on a form obtained from the Board.  
11 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,  
12 and verification of actions as are required. These declarations shall contain statements relative to  
13 Respondent's compliance with all the terms and conditions of probation. Respondent shall  
14 immediately execute all release of information forms as may be required by the Board or its  
15 representatives.

16                  4.       **Personal Appearances.** Respondent shall, during the period of probation,  
17 appear in person at interviews/meetings as directed by the Board or its designated  
18 representatives, provided such notification is accomplished in a timely manner.

19                  5.       **Comply With Probation.** Respondent shall fully comply with the terms  
20 and conditions of the probation imposed by the Board and shall cooperate fully with  
21 representatives of the Board of Accountancy in its monitoring and investigation of the  
22 Respondent's compliance with probation terms and conditions.

23                  6.       **Practice Investigation.** Respondent shall be subject to, and shall permit,  
24 practice investigation of the Respondent's professional practice. Such a practice investigation  
25 shall be conducted by representatives of the Board, provided notification of such review is  
26 accomplished in a timely manner.

27 ///

28 ///

1                   7.       **Comply With Citations.** Respondent shall comply with all final orders  
2 resulting from citations issued by the Board of Accountancy.

3                   8.       **Tolling of Probation For Out-of-State Residence/Practice.** In the event  
4 Respondent should leave California to reside or practice outside this state, Respondent must  
5 notify the Board in writing of the dates of departure and return. Periods of non-California  
6 residency or practice outside the state shall not apply to reduction of the probationary period, or  
7 of any suspension. No obligation imposed herein, including requirements to file written reports,  
8 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise  
9 affected by such periods of out-of-state residency or practice except at the written direction of the  
10 Board.

11                  9.       **Violation of Probation.** If Respondent violates probation in any respect,  
12 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation  
13 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke  
14 probation is filed against Respondent during probation, the Board shall have continuing  
15 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
16 is final.

17                  10.       **Completion of Probation.** Upon successful completion of probation,  
18 Respondent's license will be fully restored.

19                  11.       **Restricted Practice. No Audits.** Respondent shall be **permanently**  
20 **prohibited from performing audits.** Probation on this condition shall continue until such time,  
21 if ever, respondent successfully petitions the Board for the reinstatement of his ability to perform  
22 audits. Respondent understands and agrees that the Board is under no obligation to reinstate  
23 respondent's ability to perform audits, that the Board has made no representations concerning  
24 whether any such reinstatement might occur, and that the decision to reinstate is within the sole  
25 discretion of the Board.

26 ///

27 ///

28 ///

12. **Active License Status.** Respondent shall at all times maintain an active license status with the Board, including during any period of suspension. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

13. **Cost Reimbursement.** Respondent shall reimburse the Board \$4112.20 for its investigation and prosecution costs. The payment shall be made as follows: in quarterly payments (due with quarterly written reports), the final payment being due six (6) months before probation is scheduled to terminate.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 11/5/07

BRETT MILLER  
Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 11/13/07

EDMUND G. BROWN JR., Attorney General  
of the State of California

ARTHUR D. TAGGART  
Supervising Deputy Attorney General

  
\_\_\_\_\_

KENT D. HARRIS  
Deputy Attorney General

Attorneys for Complainant

Matter ID Number: 03541110-SA2007101493  
Miller final stip.wpd

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BRETT MILLER  
P.O. Box 134  
Brownsville, CA 95815

Certified Public Accountant License No. CPA  
71097

Respondent.

Case No. AC-2007-48

OAH No.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 24, 2008.

It is so ORDERED January 25, 2008.

  
\_\_\_\_\_  
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS



**Exhibit A**

**Accusation No. AC-2007-48**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KENT D. HARRIS, State Bar No. 144804  
Deputy Attorney General  
4 California Department of Justice  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-7859  
Facsimile: (916) 327-8643  
7  
Attorneys for Complainant  
8

9  
10 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-48

13 BRETT MILLER  
P.O. Box 134  
14 Brownsville, CA 95815

**A C C U S A T I O N**

15 Certified Public Accountant License No. CPA  
71097  
16

Respondent.  
17

18  
Complainant alleges:  
19

PARTIES

20  
21 1. Carol Sigmann (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Officer of the California Board of Accountancy, Department of  
23 Consumer Affairs.

24 2. On or about May 10, 1996, the California Board of Accountancy issued  
25 Certified Public Accountant License Number CPA 71097 to Brett Miller (Respondent). The  
26 Certified Public Accountant License was in full force and effect at all times relevant to the  
27 charges brought herein and will expire on January 31, 2009, unless renewed.  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

19

20  
21  
22  
23  
24

25  
26  
27  
28

1 **FACTUAL BACKGROUND**

2 8. While a partner at the accounting firm of Moss, Levy and Hartzheim,  
3 respondent was the partner in charge of the audits of two non profit organizations: "Sacramento  
4 Urban Indian Health" for the year ended December 31, 2002 (Organization #1) and "Native  
5 Direction" for the year ended September 30, 2003 (Organization #2). A subsequent investigation  
6 by the American Institute of Certified Public Accountants (AICPA) of which respondent was a  
7 member, revealed numerous violations of professional standards in both of the audits. The  
8 AICPA took a disciplinary action against respondent who was a member of that organization.  
9 The action resulted in the agreed expulsion of respondent from AICPA membership. AICPA  
10 subsequently notified the Board of said expulsion and the reasons therefor.

11 9. After further investigation by the Board, the following violations were  
12 verified:

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 10. Respondent is subject to disciplinary action under section 5100(c) in that  
16 he was grossly negligent by performing the audits of Organization 1 for the fiscal year ended  
17 December 31, 2002 and Organization 2 for the fiscal year ended September 30, 2003, that  
18 contained extreme departures from generally accepted auditing standards and generally accepted  
19 governmental auditing standards as follows.

20 The specific acts which collectively constitute gross negligence, are  
21 presented below:

22 **AUDITOR'S REPORT FOR ORGANIZATION 1**

23 A. The Schedule of Findings and Questioned Costs failed to include  
24 an internal control finding for disbursements that lacked proper supporting documentation, were  
25 for interest/financial charges, appeared to be for personal expenses or excessive usage and/or did  
26 not receive goods timely.

27 B. The findings shown in the Schedule of Findings and Questioned  
28 Costs were not written in accordance with the requirements of OMB Circular A-133.

1 The respondent did not include the federal award identification number, criteria, cause and effect,  
2 views of responsible officials as required by OMB Circular A-133.

3 C. The independent auditor's report failed to include the appropriate  
4 language in the opening paragraph to indicate that "We were engaged to audit..." and the second  
5 paragraph regarding the conduct of the audit should have been omitted.

6 **AUDITOR'S REPORT FOR ORGANIZATION 2**

7 D. The respondent reported in the Auditor's Report on Compliance  
8 and on Internal Control Over Financial Reporting a reportable condition for inadequate  
9 segregation of duties and disclosed that the finding was a material weakness. Yet, Sections I and  
10 II of the Original and Revised Summary of Findings stated that there were no reportable  
11 conditions or material weaknesses disclosed by the audit of the financial statements.

12 E. A reportable, material internal control weakness regarding  
13 inadequate segregation of duties was not disclosed in the Auditor's Report on Compliance with  
14 Requirements Applicable to Each Major Program and Internal Control Over Compliance in  
15 Accordance with OMB Circular A-133. Instead, the report stated that there were no reportable  
16 conditions or material weakness. The weakness was relevant to the single audit since federal  
17 transactions comprised a majority of the entity's total transactions.

18 **AUDIT WORK PAPERS ORGANIZATION 1**

19 F. Legal confirmations dated June 10, 2003 and July 1, 2003 were not  
20 updated for the audit report dated April 12, 2004. Additionally, the management representation  
21 letter date of May 3, 2004, was subsequent to the audit report date of April 12, 2004. This would  
22 indicate that management's written representations were not part of the evidential matter  
23 considered during the course of the audit.

24 **AUDIT WORK PAPERS ORGANIZATION 2**

25 G. The date shown on the legal representation letter obtained for the  
26 audit of Organization 2 did not meet professional standards. One attorney letter dated May 24,  
27 2004, was received five months subsequent to the date of the auditor's opinion, December 10,  
28 2003.

1 H. The respondent did not adequately plan the audit of Organization  
2 2. The audit working papers did not include documentation of the respondent's assessment of  
3 risk of material misstatement due to fraud. Additionally, the audit papers for Organization 2 did  
4 not include documentation of the respondent's understanding of the entity's internal control  
5 components sufficient to plan the audit.

6 I. The respondent assessed control risk for the disbursement and  
7 payroll transaction cycles; however, the assessments did not correlate with the results from the  
8 tests of controls. While the respondent concluded that moderate reliance could be placed on the  
9 controls, the results of the tests did not support the conclusion.

10 J. The respondent did not test client revenues totaling \$123,126. This  
11 category of revenue exceeded the materiality threshold of \$10,700 as determined by the  
12 respondent. Additionally for Organization 2, the "Disbursement Test" consisted of ten  
13 disbursement transactions and two payroll transactions that were compared to attributes shown  
14 on a three-page "Compliance Test Worksheet." For the test transactions, the respondent did not  
15 identify the sampling methodology used or the sufficiency of the sample tested.

16 K. There were no audit working papers specifically addressing  
17 internal control under the single audit.

18 L. The respondent did not address whether the entity complied with  
19 the OMB Circular A-133 compliance requirements including eligibility, equipment management  
20 and reporting.

## 21 SECOND CAUSE FOR DISCIPLINE

### 22 (Report not Conforming to Professional Standards)

23 8. Respondent is subject to disciplinary action under section 5062 of the  
24 Code as follows:

25 A. The auditor's reports for both organizations 1 & 2 did not comply  
26 with professional standards. As stated above under the sections entitled "AUDITOR'S  
27 REPORTS", the licensee:

- i. Failed to report an internal control finding that was identified in the audit;
- ii. Failed to comply with standards in reporting information related to findings;
- iii. Failed to use appropriate language in the disclaimer of opinion; and;
- iv. Failed to appropriately report on a compliance deficiency.

**THIRD CAUSE FOR DISCIPLINE**

**(Non-Compliance with Standards)**

9. Respondent is subject to disciplinary action under California Code of Regulations, title 16, section 58 for the violations set forth above in paragraph 8, as well as the following:

A. The audit work papers for both Organizations 1 & 2 did not comply with professional standards. As stated above under the section entitled “**AUDIT WORK PAPERS**”, there were deficiencies identified in;

- i. The dates of the legal and management representation letters;
- ii. Planning;
- iii. Documentation of internal control components;
- iv. Control risk assessments;
- v. Evidential matter related to client revenue;
- vi. Documentation of sampling methodology;
- vii. Internal control under the single audit; and;
- viii. Compliance requirements under the single audit.

///

///

///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking, suspending, or otherwise imposing discipline upon Certified  
5 Public Accountant License Number CPA 71097, issued to Brett Miller;

6 2. Ordering Brett Miller to pay the California Board of Accountancy the  
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
8 Professions Code section 5107;

9 3. Taking such other and further action as deemed necessary and proper.

10  
11  
12 DATED: September 25, 2007

13  
14  
15   
CAROL SIGMANN

16 Executive Officer  
17 California Board of Accountancy  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

21 03541110-SA2007101493

22 Miller accusation after corrections.wpd

23 kdh:9/25/07  
24  
25  
26  
27  
28